

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Lifeline and Link Up Reform)	WC Docket No. 11-42
and Modernization)	
)	
Telecommunications Carriers Eligible)	WC Docket No. 09-197
For Universal Service Support)	
)	
Connect America Fund)	WC Docket No. 10-90
)	

**JOINT LIFELINE ETC RESPONDENTS' OPPOSITION TO PETITIONS FOR
RECONSIDERATION**

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(d/b/a TruConnect)*

July 29, 2016

SUMMARY

The Joint Lifeline ETC Respondents (Joint Respondents) submit this opposition to two discrete issues that parties raise in their petitions for reconsideration of the Lifeline Modernization Order (Order), and to lend support on several other issues that petitioners address.

First, Joint Respondents oppose the petition of USTelecom and the joint petition of NTCA and the WTA, which ask the Commission to reconsider its 12-month broadband benefit port freeze. While a one-year benefit port freeze was not specifically proposed in the 2015 Lifeline FNPRM, the FNPRM described the subject and issues as necessary for adequate notice of the rule as required by the Administrative Procedure Act (APA). Further, even if the notice had been insufficient, it would not violate the APA because those that oppose it now had actual notice of the proposal and had every opportunity to oppose it during the rulemaking proceeding, but failed to do so. Finally, as the Commission, Joint Respondents and many other parties have argued, the 12-month broadband benefit port freeze is an essential premise to meeting the new broadband minimum service standards and broadband-capable handset requirements that will improve Lifeline offerings for low-income consumers.

Second, Joint Respondents oppose TracFone's call—yet again—for a ban on in-person handset distribution and incentive-based compensation. As Joint Commenters have stated numerous times in the past, adopting TracFone's proposals would harm consumers, competition, and the Lifeline program as a whole. TracFone's proposal to ban in-person handset distribution is an anticompetitive attempt to impose, by rule, its chosen business practice to the detriment of its competitors, including Joint Respondents. This proposal has no basis in fact and would limit competition, undermining one of the core goals of the Lifeline Modernization Order. Further, TracFone's proposal would harm proven and effective efforts that benefit low-income

consumers. Moreover, TracFone's proposal to prohibit incentive-based compensation should be rejected. Incentive-based compensation has played a vital role in driving adoption of Lifeline services over the last several years, and to the extent that a few agents compensated on an incentive basis have acted improperly, the appropriate remedy is to adopt smart, narrowly tailored controls to address those isolated incidences, rather than to ban incentive-based compensation entirely.

Separately, Joint Respondents offer support to other petitions calling for the Commission to reconsider its broadband minimum service standard increases, phase-out of support for voice only service and rolling recertification rule. First, we agree with CTIA and TracFone that the Commission should reconsider its post-year-one broadband minimum service standards, which is too much, too soon and relies on a flawed formula for increases that will harm consumers and ETCs alike. Second, we agree with NASUCA and TracFone the Commission should not phase-out support for voice services until it has confirmed through a review of the marketplace that there is no longer meaningful demand and need for standalone voice services among the Lifeline-eligible population. Third, we support the call of GCI, NTCA, WTA, and USTelecom to delay the implementation of the rolling recertification rule, at least until the National Verifier is in place. In this way, the Commission can provide ETCs with sufficient time to modify internal systems and educate consumers about the new process and what to expect without causing undue burden for ETCs or confusion for customers.

TABLE OF CONTENTS

	<u>Page No.</u>
I. The Commission and Record Provided Sufficient Notice of an Extended Benefit Port Freeze, Which Is Essential to Allow ETCs to Meet the Broadband Minimum Service Standards and Handset Requirements	2
A. The Commission Provided Sufficient Notice to Extend the Existing Benefit Port Freeze for Broadband, and Even If It Hadn't, the Deficiency Would Have Been Harmless	3
B. A 12-Month Broadband Benefit Port Freeze Provides Significant Value to Consumers, ETCs, and the Program as a Whole	6
II. The Commission Should Reject TracFone's Call for a Ban on Real-Time, In-Person Handset Distribution and Incentive-Based Agent Compensation	9
III. The Joint Respondents Agree that the Commission Should Reconsider its Post-Year-One Broadband Minimum Service Standards, Its Proposed Phase-Out of Support for Voice Service and the Timing of Its Rolling Recertification Rule	11
A. Petitioners Agree That the Broadband Minimum Service Standards Are Too Much, Too Soon	12
B. The Commission Should Reconsider Its Phase Out of Support for Standalone Voice Services.....	13
C. The Commission Should Delay Its Rolling Annual Recertification Rules.....	15
IV. Conclusion	17

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**JOINT LIFELINE ETC RESPONDENTS' OPPOSITION TO PETITIONS FOR
RECONSIDERATION**

The Joint Lifeline ETC Respondents¹ (Joint Respondents) hereby submit this opposition to two discrete issues that parties raise in their petitions for reconsideration of the Lifeline Modernization Order² (Order). First, Joint Respondents oppose the petition of the United States Telecommunications Association (USTelecom) and the joint petition of NTCA and the Wireless

¹ The Joint Lifeline ETC Respondents are American Broadband & Telecommunications Company, Blue Jay Wireless, LLC, i-wireless LLC, Telrite Corporation (collectively, the Lifeline Connects Coalition), and Assist Wireless, LLC, Easy Telephone Services Company d/b/a Easy Wireless, Prepaid Wireless Group LLC and Telscape Communications, Inc./Sage Telecom Communications, LLC (d/b/a TruConnect). Joint Respondents are wireless eligible telecommunications carriers (ETCs) and a wholesale supplier of wireless services to ETCs committed to defending the integrity of the Lifeline program so that it remains available for and to all who are eligible, enabling access to modern wireless telecommunications necessary for low-income Americans to connect to jobs, healthcare, education, emergency services and family. The Joint Respondents filed a petition for reconsideration as "Joint ETC Petitioners." *See Lifeline and Link Up Reform and Modernization, et al.*, WC Docket No. 11-42, et al., Joint Lifeline ETC Petitioners' Petition for Partial Reconsideration and Clarification (filed June 23, 2016) (Joint Petitioners Petition). In this opposition, we will refer to Joint Petitioners when discussing the original petition.

² *See Lifeline and Link Up Reform and Modernization, et al.*, WC Docket No. 11-42, et al., Third Report and Order, Further Report and Order, and Order on Reconsideration, FCC 16-38 (rel. Apr. 27, 2016) (Lifeline Modernization Order or Order).

Telecommunications Association (WTA), which ask the Commission to reconsider its 12-month broadband benefit port freeze. Second, Joint Respondents oppose TracFone's call—yet again—for a ban on in-person handset distribution and incentive-based compensation. Separately, Joint Respondents offer support to other petitions calling for the Commission to reconsider its broadband minimum service standard increases, phase-out of support for voice only service and rolling recertification rule.

I. The Commission and Record Provided Sufficient Notice of an Extended Benefit Port Freeze, Which Is Essential to Allow ETCs to Meet the Broadband Minimum Service Standards and Handset Requirements

In their petitions for reconsideration, USTelecom and NTCA and WTA challenge the Commission's adoption of an extended 12-month benefit port freeze for broadband Lifeline consumers. USTelecom argues that the Lifeline Modernization Order failed to provide adequate notice of the benefit port freeze in its rules.³ NTCA and WTA argue that the port freeze will not benefit consumers, and that competition is the key to realizing service plan improvements.⁴ They are mistaken on both points. While a one-year benefit port freeze was not specifically proposed in the 2015 Lifeline FNPRM, the FNPRM described the subject and issues as necessary for adequate notice of the rule as required by the Administrative Procedure Act (APA). Further, even if the notice had been insufficient, it would not violate the APA because those that oppose it now had actual notice of the proposal and had every opportunity to oppose it during the rulemaking proceeding, but failed to do so. Finally, as the Commission, Joint Respondents and many other parties have argued, the 12-month broadband benefit port freeze is an essential

³ See *Lifeline and Link Up Reform and Modernization, et al.*, WC Docket No. 11-42, et al., United States Telecom Association Petition for Reconsideration and Clarification, at 4-7 (filed June 23, 2016) (USTelecom Petition).

⁴ See *Lifeline and Link Up Reform and Modernization, et al.*, WC Docket No. 11-42, et al., Petition for Reconsideration/Clarification of NTCA-The Rural broadband Association and WTA – Advocates for Rural Broadband, at 16-18 (filed June 23, 2016) (NTCA and WTA Petition).

premise to meeting the new broadband minimum service standards and broadband-capable handset requirements that will improve Lifeline offerings for low-income consumers.

A. The Commission Provided Sufficient Notice to Extend the Existing Benefit Port Freeze for Broadband, and Even If It Hadn't, the Deficiency Would Have Been Harmless

In its petition, USTelecom incorrectly asserts that the Commission failed to provide adequate notice under the APA for its 12-month broadband benefit port freeze rule.⁵ Under the APA, an NPRM provides sufficient notice if it reveals “the substance of the proposed rules or a description of the subjects and issues involved,”⁶ that is, if it “provide[s] sufficient factual detail and rationale for the rule to permit interested parties to comment meaningfully.”⁷ Further, a final rule need only be a “logical outgrowth” of its original notice,⁸ which is satisfied if the Commission “expressly ask[s] for comments on a particular issue or otherwise m[akes] clear that the agency [is] contemplating a particular change.”⁹ However, even if there is not sufficient notice, “a deficiency of notice is harmless if the challengers had actual notice of the final rule . . . or if they cannot show prejudice in the form of arguments they would have presented to the agency if given a chance.”¹⁰

The Commission provided adequate notice to support the 12-month broadband benefit port freeze consistent with the APA. The FNPRM sought comment on ways that it could ease

⁵ See USTelecom Petition at 4-5.

⁶ See 5 U.S.C. § 553(b)(3).

⁷ See *Honeywell Int'l, Inc. v. EPA*, 372 F.3d 441, 445 (D.C. Cir. 2004).

⁸ See *Covad Communications Co. v. FCC*, 450 F.3d 528, 548 (D.C. Cir. 2006).

⁹ See *CSX Transportation, Inc. v. Surface Transportation Board*, 584 F.3d 1076, 1081 (D.C. Cir. 2009).

¹⁰ See *USTelecom v. FCC*, No. 15-1063, 78 (D.C. Cir. June 14, 2016) (citing *Small Refiner Lead Phase-Down Task Force v. EPA*, 705 F.2d 506, 549 (D.C. Cir. 1983); *Owner-Operator Independent Drivers Ass'n v. Fed. Motor Carrier Safety Admin.*, 494 F.3d 188, 202 (D.C. Cir. 2007)).

market entry and enhance competition and innovation in the market;¹¹ asked about ways to encourage broader participation in the Lifeline program with more robust offerings and ways to create more efficiency in the eligibility determination process;¹² and sought input on the role that the National Verifier could play in the subscriber enrollment process.¹³ In so doing, the Commission provided a “description of the subjects and issues involved” sufficient to put stakeholders on notice that commenters would propose various solutions to meet the Commission’s identified goals.

Specifically, it is clear that the Commission was seeking ways to improve the efficacy and efficiency of the Lifeline program and encourage participation by additional ETCs, and an extended benefit port freeze is a reasonably obvious way to achieve those goals using existing mechanisms. At the time that the Commission issued its FNPRM, a 60-day benefit port freeze had already been in place for over a year and had served as a meaningful—but imperfect—means of curbing consumer flipping between multiple providers and promoting a more stable Lifeline market to encourage provider participation. As Sprint explained in a letter filed in the docket of the rulemaking proceeding, “[t]he existing 60-day freeze appears to have moderated flipping as compared to situations in which there is no freeze, thereby increasing stability in the Lifeline program.”¹⁴ Joint Lifeline ETC Commenters similarly explained that “by expanding the reasonable velocity check *already in place*,” the Commission could simultaneously impose a

¹¹ See *In the Matter of Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible for Universal Service Support, Connect America Fund*, WC Docket Nos. 11-42, 09-197, 10-90, Second Further Notice of Proposed Rulemaking, Order on Reconsideration, Second Report and Order, and Memorandum Opinion and Order, FCC 15-71 ¶¶ 121, 127 (rel. June 22, 2015) (2015 Lifeline FNPRM).

¹² See *id.* ¶¶ 116, 121.

¹³ See *id.* ¶¶ 65, 70.

¹⁴ Letter from Norina Moy, Director, Gov’t Affairs, Sprint, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 et al., at 2 (filed Feb. 3, 2016) (Sprint Letter).

“‘velocity check’ on unscrupulous customers” while “provid[ing] service providers with an incentive to make more significant investments in devices and services, so that low-income consumers can benefit from the up-front advantages of longer term carrier relationships.”¹⁵ As a result, commenters that suggested a 12-month benefit port freeze in response to the questions posed in the FNPRM were not asking for something new, but rather for a more stable version of something that already existed.

Further, even if there had not been adequate notice of the 12-month benefit port freeze, which is not the case, USTelecom cannot show “prejudice in the form of arguments they would have presented to the agency if given a chance.”¹⁶ The concept of an extended benefit port freeze played a prominent role in the proceeding. The Joint Lifeline ETC Commenters (including many of Joint Respondents) provided a detailed explanation of the value of a 12-month benefit port freeze in achieving the Commission’s goals of competition, innovation, and consumer value in comments, reply comments and multiple *ex parte* submissions.¹⁷ Multiple commenters supported the concept of a benefit port freeze as a reasonable solution to a vexing

¹⁵ See *Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible for Universal Service Support, Connect America Fund*, WC Docket Nos. 11-42, 09-197, 10-90, Comments of the Lifeline Joint Commenters on the Second Further Notice of Proposed Rulemaking to Modernize and Restructure the Lifeline Program at 16-17 (filed Aug. 31, 2015) (Joint Commenters Comments) (emphasis added).

¹⁶ USTelecom, No. 15-1063 at 78.

¹⁷ See Joint Commenters Comments at 16; see also, e.g., *Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible for Universal Service Support, Connect America Fund*, WC Docket Nos. 11-42, 09-197, 10-90, Reply Comments of the Lifeline Joint Commenters on the Second Further Notice of Proposed Rulemaking to Modernize and Restructure the Lifeline Program at 22-24 (filed Sept. 30, 2015) (Joint Commenters Reply); Letter from John Heitmann, Counsel to the Lifeline Connects Coalition, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 et al., at 2 (and Exhibits) (filed Oct. 16, 2015); Letter from John Heitmann, Counsel to the Lifeline Connects Coalition, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 et al., at 2 (and Exhibits) (filed Dec. 7, 2015); Letter from John Heitmann, Counsel to the Lifeline Connects Coalition, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 et al., at 4 (and Exhibit) (filed Jan. 28, 2016); Letter from John Heitmann, Counsel to the Lifeline Connects Coalition, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 et al., at 4 (and Exhibit) (filed Feb. 3, 2016) (Lifeline Connects Feb. 2016 Letter).

issue in the Lifeline market and to support the Commission’s goals.¹⁸ The fact that USTelecom declined to oppose a benefit port freeze at any stage of the rulemaking until after the Commission released the Lifeline Modernization Order does not mean that it did not have the chance to do so. Indeed, even after the groundswell of support from Smith Bagley, Telscape, and Sprint for an extended benefit port freeze, USTelecom failed to weigh in on the proposal. As such, USTelecom cannot credibly claim that it lacked the opportunity to make arguments opposing a 12-month benefit port freeze, and even if there had been a deficiency in notice, it was therefore harmless under APA precedent.

B. A 12-Month Broadband Benefit Port Freeze Provides Significant Value to Consumers, ETCs, and the Program as a Whole

In their petition, NTCA and WTA ask the Commission to reconsider the 12-month port freeze because “it is difficult to see how low-income consumers or the Lifeline program itself derives any value from [it].”¹⁹ Instead, NTCA and WTA argue that “[t]he Commission should . . . focus on quality of competition, looking at every turn to ensure that low-income consumers and the Lifeline fund itself receive value in terms of both price and service quality – and not just

¹⁸ See Letter from David A. LaFuria, Counsel, Smith Bagley, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 et al., at 14 (filed Dec. 7, 2015); *Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible for Universal Service Support, Connect America Fund*, WC Docket Nos. 11-42, 09-197, 10-90, Comments of Telscape Communications, Inc. and Sage Telecom Communications, LLC on the Second Further Notice of Proposed Rulemaking to Modernize and Restructure the Lifeline Program at 15-16 (filed Aug. 31, 2015) (supporting the proposal to extend a benefit port freeze to 12 months and “urg[ing] the Commission to explore additional ways to provide stability and certainty to providers that offer advanced equipment to subscribers.”); Sprint Letter at 2 (“The existing 60-day freeze appears to have moderated flipping as compared to situations in which there is no freeze, thereby increasing stability in the Lifeline program. Thus, Sprint is willing to consider expanding the freeze, provided that the solution appropriately balances the need to ensure free customer choice, to promote competition, and to provide service providers with an opportunity to recoup acquisition costs and prove the value of their service.”).

¹⁹ NTCA and WTA Petition at 17.

basic ‘availability’ of service.”²⁰ To that end, NTCA and WTA suggest “full benefit portability would serve every low-income subscriber in the same manner.”²¹ We disagree.

First, while Joint Respondents agree with NTCA and WTA that the Commission should seek to find ways to promote competition and consumer value in the Lifeline program, removing the 12-month benefit port freeze for broadband customers would have the opposite effect. Indeed, in the Lifeline Modernization Order the Commission adopted a 12-month benefit port freeze specifically *because* it would enhance consumer choice and service offerings by promoting market entry, competition, and innovation.²² Joint Respondents commend the Commission for reaching the right result on this issue based on a complete record and sound reasoning.

Second, a 12-month benefit port freeze is essential for wireless providers to meet the broadband minimum service standards and handset requirements adopted in the Lifeline Modernization Order, which will result in increased Lifeline benefits for consumers. Without a benefit port freeze to stabilize the subscriber-carrier relationship, many ETCs would find it impossible to meet the Commission’s minimum service standards and handset requirements at a cost that is affordable for low-income consumers. As we have long argued (and data and experience show), where there are not affordable options, consumers are unwilling or unable to participate in the Lifeline program.²³ Consequently, the absence of a 12-month broadband benefit port freeze under the new Lifeline rules would drive many would-be ETCs from the

²⁰ *Id.* at 17.

²¹ *Id.*

²² *See* Lifeline Modernization Order ¶¶ 385-94.

²³ *See, e.g.,* Lifeline Connects Feb. 2016 Letter at 2.

program, undermining NTCA's, WTA's and the Commission's goal of promoting competition and innovation.

Third, a benefit port freeze counteracts potential waste and abuse in the Lifeline program. The Commission and several industry commenters recognized the significant negative impact that "flippers" can have for ETCs and the program.²⁴ California, which lacks a benefit port freeze (because the state has opted out of the NLAD), provides an unfortunate and relevant example.²⁵ In California, the Lifeline program is subject to abuse by some consumers intent on drawing multiple disbursements from the federal Lifeline fund and multiple handsets from providers. This abuse results in significant costs to service providers and the program as a whole, leaving many ETCs unwilling to offer advanced handsets without a significant additional subsidy. Until remedied, the lack of a benefit port freeze in California undermines the ability of ETCs to offer more affordable access to a wide and robust array of mobile voice, text and broadband communications services. While California's program is admirable in many respects, this is one area where the Commission should not emulate. For this reason, the Commission should reject NTCA and WTA's request for reconsideration, which would undermine the Commission's goals of competition and innovation.

Fourth, the benefit port freeze will bring the selection of broadband Lifeline services by low-income consumers in line with the manner in which non-Lifeline consumers purchase broadband services. For non-Lifeline consumers, choosing a carrier and a handset is an important decision that requires significant research. For most consumers, the trade-off of a

²⁴ See Lifeline Modernization Order at ¶ 385 ("In areas where there are many Lifeline providers, eligible subscribers churning often reduces the incentive for Lifeline providers to participate in the program.").

²⁵ See Joint Commenters Comments at 36.

longer-term contract or financing plan in exchange for a more advanced handset and a better service plan is a reasonable one. Indeed, by making it easier to get smartphones in consumers' hands, these programs have helped to drive the rise of smartphones and the app economy. The benefit port freeze serves a similar purpose, without necessarily requiring customers to sign a contract or finance their device. In this way, it is a win for low-income consumers and the Lifeline program. Indeed, a year-long commitment is half as long as many postpaid contracts and device financing plans in the market today.

Because it is clear that the 12-month broadband benefit port freeze will create significant consumer value while providing much-needed certainty in the market, the Commission should reject NTCA's and WTA's petition to reconsider this essential component of the new broadband minimum service standards and handset requirements.

II. The Commission Should Reject TracFone's Call for a Ban on Real-Time, In-Person Handset Distribution and Incentive-Based Agent Compensation

In its petition for reconsideration, TracFone once again calls on the Commission to prohibit real-time, in-person handset distribution and to ban incentive-based compensation.²⁶ As Joint Commenters have stated numerous times in the past—and many commenters have agreed—adopting TracFone's proposal would harm consumers, competition, and the Lifeline program as a whole.

TracFone's proposal to ban in-person handset distribution is an anticompetitive attempt to impose, by rule, its chosen business practice to the detriment of its competitors, including Joint Respondents. This proposal has no basis in fact and would limit competition, undermining one of the core goals of the Lifeline Modernization Order. Further, TracFone's proposal would

²⁶ See *Lifeline and Link Up Reform and Modernization, et al.*, WC Docket No. 11-42, et al., TracFone Petition for Reconsideration, at 2 (filed June 23, 2016) (TracFone Petition).

harm proven and effective efforts that benefit low-income consumers. In-person enrollment and handset distribution has been an essential driver of Lifeline service adoption among low-income consumers,²⁷ and promotes dignity in the enrollment process, allowing low-income Americans to access wireless devices and service in real-time at the point of enrollment in the same manner that most non-low-income consumers expect. In-person enrollment and handset distribution also provides a unique opportunity for consumers to receive any necessary training on how to use broadband service and their handset, promoting digital literacy for those consumers who need it most. Lastly, in-person enrollment and handset distribution enables ETCs to proactively curb waste, fraud and abuse at the point of enrollment, by verifying that the Lifeline-eligible consumer is the person who receives and activates the wireless handset and providing ETCs with an opportunity to promote responsible use of Lifeline benefits. These educational touch-points reduce the likelihood that a subscriber will inadvertently violate program rules, or engage in other wasteful or abusive practices such as “flipping.”

TracFone’s proposal to prohibit incentive-based compensation should be rejected for many of the same reasons that the Commission should reject TracFone’s proposal to ban in-person handset distribution. First, incentive-based compensation has played a vital role in driving adoption of Lifeline services over the last several years. Many ETCs use agents to provide applicants with personalized and immediate assistance during in-person enrollments at events and in retail stores. Compensating these individuals in the form of commissions or other performance rewards creates an incentive for them to find, educate and enroll eligible subscribers. Second, to the extent that a few agents compensated on an incentive basis have

²⁷ Indeed, in-person enrollment and handset distribution enables ETCs to effectively serve some of the most vulnerable low-income communities in America, including the homeless and those who have been displaced by natural disasters and other emergencies. People in these circumstances often lack a permanent address to which an ETC could ship a handset.

acted improperly, the appropriate remedy is to adopt smart, narrowly tailored controls to address those isolated incidences, rather than to ban incentive-based compensation entirely. ETCs have implemented robust training and oversight programs to ensure that agents understand the Lifeline rules, further limiting the risk of bad acts. Third, in today's Lifeline market, agents in the field serve only in a clerical capacity—they do not make decisions about whether a consumer is eligible to participate in the program. Instead, ETCs rely on back-office staff who are not paid on a commission basis (and soon will rely on the National Verifier) to make decisions about verifying applicants' eligibility for Lifeline.

For these reasons, the Commission should yet again reject TracFone's call to impose anticompetitive proposals that would harm consumers and undermine the goals of the Lifeline Modernization Order.

III. The Joint Respondents Agree that the Commission Should Reconsider its Post-Year-One Broadband Minimum Service Standards, Its Proposed Phase-Out of Support for Voice Service and the Timing of Its Rolling Recertification Rule

The Joint Respondents agree with several petitioners that the Commission should reconsider its broadband minimum service standards, phase-out of support for voice services and rolling annual reconsideration rules. First, we support those petitioners that argue that the Commission should reconsider its post-year-one broadband minimum service standards, which is too much, too soon and relies on a flawed formula for increases that will harm consumers and ETCs alike. Second, we agree that the Commission should not phase-out support for voice services until it has confirmed through a review of the marketplace that there is no longer meaningful demand and need for standalone voice services among the Lifeline-eligible population. Third, we agree with those petitioners that assert that the implementation date of any rolling recertification rule should be extended at least until the National Verifier is in place.

A. Petitioners Agree That the Broadband Minimum Service Standards Are Too Much, Too Soon

Joint Respondents agree with CTIA and TracFone that the Commission's broadband minimum service standard increases are too much, too soon, and should be revised. Joint Petitioners urged the Commission to reconsider its minimum service standard for broadband after 2017, which relies on an unworkable multi-person household formula untethered to the Lifeline program's "central touchstone" of affordability, and to replace it with a formula that respects single-individual households and includes an affordability safety valve.²⁸

In its petition, CTIA argues that the Commission failed to engage in any analysis of whether its proposed broadband minimum service standard was in fact affordable, and further argued that the record demonstrated that the usage level of 70 percent underlying the broadband minimum service standard would render Lifeline service unaffordable for many.²⁹ CTIA also correctly asserts that "discrepancies [in the long-term Lifeline broadband minimum service standard] make the rule impossible to interpret or implement, and such lack of clarity about the applicable long-term minimum service standard for mobile broadband introduces uncertainties that will inhibit provider participation in the Lifeline market."³⁰ For that reason, CTIA urges the Commission to, at a minimum, "modify the Order and rule to address the discrepancies," "clarify how average mobile broadband usage per household will be calculated" based on public input, and "take the opportunity to reconsider the long-term minimum service standard for mobile broadband."³¹

²⁸ See Joint Petitioners Petition at 3.

²⁹ See *Lifeline and Link Up Reform and Modernization, et al.*, WC Docket No. 11-42, et al., Petition for Reconsideration of CTIA, at 3 (filed June 23, 2016).

³⁰ See *id.* at 7.

³¹ *Id.* at 8.

In addition, TracFone requests that the Commission reconsider whether the minimum data usage amounts and the long-term formula for adjusting those amounts enable low-income consumers to obtain affordable access to mobile broadband service and whether such a requirement would serve the purpose of the Lifeline program.³²

Joint Commenters agree with CTIA and TracFone that the Commission's formula for broadband minimum service standard increases is deeply flawed, and call on the Commission to reconsider the formula as described in the petition for reconsideration filed by the Joint ETC Petitioners.³³ The Commission failed to appreciate the affordability challenges that its broadband minimum service standard would impose on low-income consumers, as well as the unworkability of its unnecessarily complicated and unclear long-term standard.

B. The Commission Should Reconsider Its Phase Out of Support for Standalone Voice Services

Joint Respondents agree with NASUCA and TracFone that the Commission should reconsider its decision to step down and eliminate support for standalone voice services. In its petition, Joint Petitioners argued that the Commission should not phase down support for standalone voice service until it completes and reviews its State of the Lifeline Marketplace Report (Report), either by delaying the step-down in voice support until six months after the report is due (under the current rules), or by advancing the due date of the Report to June 30, 2019, before the planned first step-down in subsidy amounts.³⁴ If the Commission ultimately determines that prices or demand for standalone voice services have not decreased sufficiently to

³² See TracFone Petition at 16.

³³ See Joint Petitioners Petition at 3-9.

³⁴ See *id.* at 10.

warrant decreasing support for voice service, then the Commission either should keep support levels at \$9.25 per month or reduce the minimum standard to reflect the new support amount.³⁵

In their petitions, TracFone and NASUCA agreed that the Commission should reconsider its phase-out of standalone voice service. First, the evidence demonstrates that consumers do and will continue to value voice services. As TracFone explains in its petition, “phased elimination only postpones, but does not eliminate, loss of an essential service relied upon for years by millions of low-income households.”³⁶ Indeed, while ETCs are rapidly moving toward bundled offerings and are considering the introduction of broadband-only offerings, broadband has not yet replaced traditional voice telephone services, particularly among low-income and older Americans.³⁷

Second, eliminating voice-only support is unnecessary to achieve the Commission’s goals of providing access to broadband.³⁸ The Commission’s decision to expand Lifeline support to broadband, coupled with its 12-month broadband benefit port freeze, will spur many traditional voice-only ETCs to offer broadband to low-income consumers. As more consumers become aware of Lifeline-supported broadband offerings, they will transition—without the need for additional Commission intervention—to broadband. And as broadband-supported service permeates low-income communities, it will create additional incentives for non-adopters to get online. As consumers increasingly choose service plans with a broadband component, fewer

³⁵ *See id.* at 10-11.

³⁶ *See* TracFone Petition at 3.

³⁷ *See id.* at 4-5 (noting that there is nothing “in the record to demonstrate that critical state, city and community services which rely on N11 numbers, including, for example, 211 (United Way); 311 (Municipal Governments non-emergency services); 511 (traffic or police non-emergency services); 711 (TDD and relay services); and 811 (underground public utility location services), will be available using broadband voice or texting options”).

³⁸ *See Lifeline and Link Up Reform and Modernization, et al.*, WC Docket No. 11-42, et al., NASUCA Petition for Reconsideration, at 3-4 (filed June 23, 2016) (NASUCA Petition).

individuals will rely on voice-only services, until all or nearly all consumers rely solely on bundles or broadband-only offerings for their communications needs. However, Lifeline-supported voice services will remain essential to a small number of low-income consumers that need voice access to emergency and social services, but perceive no use for broadband, and should be permitted to choose what service best meets their needs.

Because voice service still plays and will likely continue to play an important role in the lives of low-income Americans and a phase-out of voice services is unnecessary to achieve the Commission's broadband goals, the Commission should reconsider its reduction in support for voice services until after it has an opportunity to determine in its State of the Lifeline Market report whether support for standalone voice services is no longer necessary.

C. The Commission Should Delay Its Rolling Annual Recertification Rules

In their petition, Joint Petitioners requested that the Commission reconsider aspects of its rolling annual recertification process, which would confuse and unnecessarily burden Lifeline subscribers with little to no offsetting benefit.³⁹ NTCA and WTA, USTelecom, and GCI agree that the Commission should reconsider its rolling recertification rule or at least delay its implementation until the National Verifier is in place. While Joint Petitioners solely requested that the Commission reset each subscriber's rolling recertification date to 12 months from any new enrollment or benefit transfer, rather than requesting rescission of the rule, we appreciate the concerns of these other petitioners and therefore support a delay of the transition to rolling recertification until the National Verifier is in place.

The transition to a rolling recertification process is designed to ease the recertification burden that the National Verifier ultimately will bear and to allow the National Verifier to

³⁹ See Joint Petitioners Petition at 21.

recertify eligibility throughout the year rather than all at the end of the calendar year.⁴⁰ That is understandable, but does not support imposing the transition on ETCs before the National Verifier is in place and takes on this role. Joint Respondents agree that the rolling recertification rule would impose tremendous burdens on ETCs, and therefore that a delay of the implementation date is warranted. As GCI explains, complying with the rolling recertification requirement before the National Verifier is implemented would require ETCs to “modify systems to identify and track, on a subscriber-specific basis, the date by which the recertification process must be initiated.”⁴¹ USTelecom similarly asserts that a rolling recertification process would “impose significant additional administrative burdens on Lifeline providers who already have processes in place for managing recertifications under the existing Lifeline rules.”⁴² Moreover, because rolling recertification will drive up inquiries from consumers for whom rolling recertification is a foreign process, it would unduly increase the burden on customer service staff.⁴³ NTCA and WTA note that many carriers have only a handful of employees, and it is less burdensome to conduct recertification (and any necessary de-enrollments) for their Lifeline subscribers all at once rather than track each individual’s service initiation date.⁴⁴

For these reasons, we support the call of GCI, NTCA, WTA, and USTelecom to delay the implementation of the rolling recertification rule, at least until the National Verifier is in place.

In this way, the Commission can provide ETCs with sufficient time to modify internal systems

⁴⁰ See Lifeline Modernization Order ¶ 417.

⁴¹ See *Lifeline and Link Up Reform and Modernization, et al.*, WC Docket No. 11-42, et al., General Communication, Inc. Petition for Reconsideration and/or Clarification, at 5 (filed June 23, 2016)(GCI Petition).

⁴² See USTelecom Petition at 3-4.

⁴³ See GCI Petition at 6.


⁴⁴ See NTCA and WTA Petition at 14-15 (“Spreading the need for a provider’s employees to dedicate time to recertification throughout the year rather than just once is an unnecessary additional burden.”).

and educate consumers about the new process and what to expect without causing undue burden for ETCs or confusion for customers.

IV. Conclusion

The Lifeline Modernization Order took a number of admirable strides to bring the Lifeline program into the 21st Century. In particular, the adoption of a 12-month broadband benefit port freeze will promote mutually advantageous customer-carrier relationships and allow wireless broadband providers to meet the new broadband minimum service standards and handset requirements in a manner that is affordable for low-income consumers. Further, the preservation of in-person enrollment and handset distribution or incentive-based compensation will serve a critical role in promoting broadband education and adoption. Therefore, the Commission should reject calls to eliminate the benefit port freeze or to ban in-person handset distribution and incentive-based compensation. To further improve the Lifeline program, the Joint Respondents agree that the Commission should reconsider its formula for broadband minimum service standard increases, preserve voice-only service as a means of respecting consumer choices and expectations, and delay its transition to rolling annual recertification until the National Verifier is in place.

Respectfully submitted,

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July 29, 2016

Certificate of Service

I, Joshua T. Guyan, hereby certify that on this 29th day of July, 2016, I caused a copy of the foregoing Opposition of the Joint Lifeline ETC Respondents to be served by USPS First Class Mail on the following:

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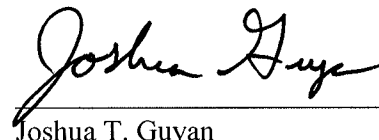
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